

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ERIK GREENWAY,

Plaintiff,

v.

HAYWARD INDUSTRIES, INC.,

Defendant.

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CIVIL ACTION NO. 5:22-cv-542

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES COURT:

COMES NOW HAYWARD INDUSTRIES, INC., the sole Defendant in the above styled and numbered cause, and files this Defendant's Notice of Removal, and in support thereof would respectfully show the Court as follows:

I. INTRODUCTION

1. Pursuant to 28 U.S.C. § 1441(a) and 28 U.S.C. § 1441(b), and in compliance with 28 U.S.C. § 1446, Defendant Hayward Industries, Inc., timely removes the following civil state court action to the United States District Court for the Western District of Texas, San Antonio Division: Cause No. 2022CI06624 styled: *Erik Greenway v. Hayward Industries, Inc.*; in the 224th Judicial District Court of Dallas County, Texas. (the "State Court Action").

2. Removal to the United States District Court for the Western District of Texas, San Antonio Division, is proper because:

- i. Defendant Hayward Industries, Inc., is a New Jersey corporation which has its principal place of business in the State of North Carolina; thus, Hayward Industries, Inc., is a citizen of both New Jersey and North Carolina;
- ii. Plaintiff Erik Greenway resides in the State of Texas; thus, Plaintiff is a citizen of Texas.

- iii. The District Courts of the United States have jurisdiction of this action because: (a) this is a civil action between citizens of different states; and (b) the amount in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs (Plaintiff's Original Petition filed in the State Court Action alleges that Plaintiff is seeking monetary damages in excess of one million dollars (\$1,000,000.00);
- iv. This Notice of Removal is timely filed as this Notice of Removal is filed within thirty (30) days after the Plaintiff filed or served a document that creates or establishes diversity jurisdiction allowing removal; and
- v. The United States District Court for the Western District of Texas, San Antonio Division, is the District Court of the United States for the District and Division embracing the place where the State Court Action was filed.

3. This Notice of Removal is signed pursuant to Rule 11, Federal Rules of Civil Procedure.

II. STATEMENT OF GROUNDS FOR REMOVAL

A. This Lawsuit Involves a Civil Action Between Citizens of Different States

4. Pursuant to 28 U.S.C. § 1332(a)(1), the United States District Courts have diversity jurisdiction when a civil action is between citizens of different states. Plaintiff represented in his Original Petition filed in the State Court Action that he resides in Bexar County, Texas. Defendant Hayward Industries, Inc., is a New Jersey corporation with its principal place of business in the State of North Carolina. Therefore, diversity of citizenship exists between Plaintiff and Defendant as required by 28 U.S.C. § 1332(a)(1).

B. Amount in Controversy Exceeds \$75,000.00 Exclusive of Interest and Costs

5. In paragraph 5 of his Original Petition filed in the State Court Action, Plaintiff alleges: "Plaintiff seeks monetary relief over \$1,000,000."

6. Plaintiff has alleged that his damages are in excess of one million dollars; therefore, the matter in controversy exceeds the sum of Seventy-Five Thousand and No/100 Dollars (\$75,000.00), exclusive of interest and costs, and thereby exceeds the requisite \$75,000.00 minimum jurisdictional

limits of the Court. As a result, the amount in controversy is sufficient for diversity of citizenship jurisdiction.

**III. ORIGINAL JURISDICTION PURSUANT TO 28 U.S.C. § 1332(A);
REMOVAL IS PROPER PURSUANT TO 28 U.S.C. §§ 1441(a) AND 1441(b)**

7. Diversity of citizenship exists and it has been ascertained that the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Therefore, the District Courts of the United States have jurisdiction of this action. 28 U.S.C. § 1332(a). Furthermore, Defendant is not a citizen of Texas. Thus, removal is proper per 28 U.S.C. § 1441(a) and 28 U.S.C. § 1441(b).

IV. TIMELY REMOVAL

8. Defendant has not yet been served with process in the State Court Action. Given Plaintiff's allegations quoted above, the suit became removable no earlier than April 29, which is the date that counsel for Hayward Industries, Inc., received a copy of Plaintiff's Original Petition filed in the State Court Action. Defendant's Notice of Removal is filed within the thirty day period following receipt of Plaintiff's Original Petition. Therefore, the filing of Defendant's Notice of Removal is timely under 28 U.S.C. § 1446(b).

V. ATTACHMENTS AND COUNSEL

9. Pursuant to 28 U.S.C. § 1446(a) copies of the following documents are attached to this Notice of Removal:

| Exhibit No. | Description |
|--------------------|---|
| A | Index of Documents |
| A-1 | Case Summary |
| A-2 | Plaintiff's Original Petition |
| A-3 | Citation |
| A-4 | 2022.05.19 Ltr to Court re copies of document |

10. A complete list of attorneys involved in the State Court Action include:

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| <p>W. Stephen Graves State Bar No. 08313010</p> <p>Graves Law Firm 134 E. Mistletoe San Antonio, TX 78212 Tel: 210/738-3230 Fax: 210/738-3195</p> <p>Counsel for Plaintiff</p> | <p>E. Stratton Horres, Jr. State Bar No. 10011800 Stratton.horres@wilsonelser.com Lee L. Cameron, Jr. State Bar No. 03675380 Lee.cameronjr@wilsonelser.com</p> <p>Wilson Elser Moskowitz Edelman & Dicker LLP Bank of America Plaza – 901 Main Street, Suite 4800 Dallas, TX 75202-3758 Tel: 214/698-8000 Fax: 214/698-1101</p> <p>Counsel for Defendant</p> |
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VI. NOTICE TO ADVERSE PARTIES/ FILING WITH CLERK OF STATE COURT

11. Pursuant to 28 U.S.C. § 1446(d) and promptly after the filing of this Notice of Removal, Defendant will provide written notice of removal to the adverse party and Defendant is filing a copy of the Defendant's Notice of Removal with the clerk of the state district court of Bexar County, Texas.

VII. CONCLUSION

For the reasons stated herein reasons, Defendant Hayward Industries, Inc. removes the State Court Action to the United States District Court for the Western District of Texas, San Antonio Division.

Respectfully submitted,

/s/ E. Stratton Horres, Jr.

E. Stratton Horres, Jr.

State Bar No. 10011800

Stratton.Horres@wilsonelser.com

Lee L. Cameron, Jr.

State Bar No. 03675380

Lee.Cameron@wilsonelser.com

WILSON, ELSER, MOSKOWITZ,

EDELMAN & DICKER, LLP

901 Main Street, Suite 4800

Dallas, Texas 75202-3758

(214) 698-8000 – Main

(214) 698-1101 – Fax

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

The undersigned certifies that on this 26th day of May 2022, a true and correct copy of the above and foregoing document was served upon all counsel of record in accordance with the FEDERAL RULES OF CIVIL PROCEDURE.

/s/ Lee L. Cameron, Jr.

Lee L. Cameron, Jr.